

**IN THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SEARS, ROEBUCK AND CO.,

Respondent,

- and -

LOCAL 881, UNITED FOOD AND
COMMERCIAL WORKERS,

Charging Party.

Case No. 13-CA-191829

RESPONDENT'S EXCEPTIONS TO THE ALJ'S DECISION

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent Sears, Roebuck and Co. respectfully submits the following exceptions to the Administrative Law Judge's Decision:

1. Respondent excepts to the ALJ's conclusion that "Respondent's reliance on the decertification petition signed within the certification year in withdrawing recognition from the Union after the certification year constitutes a violation of Section 8(a)(5) and (1) of the Act," (ALJD 13:23-25); the ALJ's recommended order requiring Respondent to cease and desist from the withdrawal of recognition, (ALJD 14:15-17); the ALJ's recommended order requiring Respondent to recognize the Union and, upon request, bargain for "a reasonable period of time (as set forth in *Lee Lumber & building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002)), " (ALJD 14:22-27); and the ALJ's recommended order requiring the posting of a Notice to Employees relating to these issues, (ALJD 15:12-24 and Recommended Notice). Based on the record evidence,

(see ALJD 2:27-3:6; 3:33-35; 4:1-5:11; 8:30-31; 9:13-13:12; GCX 1(c); GCX 2; GCX 3; RX 1; RX 2; RX 3; Tr. 30:15-31:6; 41:21-42:2; 43:5-13; 44:1-47:6; 50:2-52:3; 55:23-25; 56:8-10; 59:16-20; 61:7-12; 62:16-25; 67:13-68:17; 68:2-69:8; 79:15-25; 80:1-81:16; 82:10-23; 83:2-10; 84:16-85:24; 89:22-93:17; 108:1-10; 109:1-11; 112:23-25; 120:14-25), this conclusion and these recommendations are contrary to the National Labor Relations Act and applicable case law.

2. Respondent excepts to the ALJ's consideration of its lawful "ministerial role in facilitating the decertification petition" in her attempt to distinguish *LTD Ceramics, Inc.*, 341 NLRB 86 (2004), from the case at hand, (ALJD 12:39-12:4), and her statement that Respondent's lawful ministerial role in this regard did not foster "good-faith collective bargaining," (ALJD 13:9-12). This reasoning is contrary to the National Labor Relations Act and applicable case law.

3. Respondent excepts to the ALJ's reliance on *Chelsea Industries, Inc.*, 331 NLRB 1648 (2000), and *Latino Express*, 360 NLRB 911 (2014). (ALJD 12:9-17; 12:39-41; 13:17-20.) Based on the record evidence, (see ALJD 2:27-3:6; 3:33-35; 4:1-5:11; 8:30-31; 9:13-13:12; GCX 1(c); GCX 2; GCX 3; RX 1; RX 2; RX 3; Tr. 30:15-31:6; 41:21-42:2; 43:5-13; 44:1-47:6; 50:2-52:3; 55:23-25; 56:8-10; 59:16-20; 61:7-12; 62:16-25; 67:13-68:17; 68:2-69:8; 79:15-25; 80:1-81:16; 82:10-23; 83:2-10; 84:16-85:24; 89:22-93:17; 108:1-10; 109:1-11; 112:23-25; 120:14-25), those cases are

distinguishable, but in any event, they should be overruled as inconsistent with the National Labor Relations Act and other Board case law.

Respectfully submitted,

SEARS, ROEBUCK AND CO.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing exceptions to be e-filed with the National Labor Relations Board and served on the following parties via U.S. Mail and e-mail on this 14th day of September, 2018:

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